



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MGE/148874

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 19, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on June 04, 2013, at Kenosha, Wisconsin.

The issue for determination is whether the Kenosha County Human Service Department correctly denied Petitioner's request to backdate Institution Long Term Care benefits.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Karen Mayer, Fair Hearing Representative and Roberta Bloner, Economic  
Support Specialist

Kenosha County Human Service Department  
8600 Sheridan Road  
Kenosha, WI 53143

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Kenosha County.

2. On January 1, 2013, Petitioner's daughter submitted an ACCESS application for healthcare benefits on Petitioner's behalf. At the time of application, Petitioner was a widow living in a nursing home. (Exhibit 4)
3. In the ACCESS application, Petitioner's daughter listed as assets a checking account with a balance of \$817.53, a savings account with a balance of \$996.07, an irrevocable burial trust worth \$8849.00 and a home whose value was not entered into the application. (Exhibit 4)
4. On January 18, 2013, Petitioner's daughter went to the agency and dropped off some items for verification of income/assets. (Exhibit 11)
5. On January 21, 2013, the agency sent Petitioner a notice indicating that her application for Nursing Home Long Term Care benefits was denied because her assets were over the program limit. Among the assets counted were burial assets in the amount of \$8,849.00; a checking account with a balance of \$817.53 and a house valued at \$149,000.00. (Exhibit 5)
6. On February 15, 2013, Petitioner's daughter entered into a listing contract for the sale of Petitioner's home, indicating that the term of the contract was for 180 days from June 1, 2013. (Exhibit 8)
7. On February 19, 2013, Petitioner's daughter met with a case worker and completed another application on Petitioner's behalf. At that time, Petitioner listed as assets \$68.50 cash, a checking account with a balance of \$1105.27, a savings account with a balance of \$82.52, a home worth \$149,000 and burial insurance worth \$8849.00. (Exhibits 6 and 11)
8. During the February 19, 2013 meeting, Petitioner's daughter indicated that the bank accounts were in the process of being closed and that she would later provide proof of the same. In addition, the case worker informed Petitioner's daughter that the home would be counted as an asset unless listed for sale and that the realtor's contract needed to be current. (Exhibit 11)
9. On February 20, 2013, Petitioner signed an amendment to the listing contract indicating that the contract term be changed to 180 days from February 20, 2013 and that the Listing Broker will not market or advertise the property until June 1, 2013. (Exhibit 9)
10. On March 13, 2013, the agency received verification that the bank accounts were closed and it received the amendment to the listing contract. (Exhibit 11)
11. On March 14, 2013, the agency sent Petitioner a notice indicating that she was eligible for Nursing Home Long Term Care benefits effective February 1, 2013. (Exhibit 10)
12. Petitioner's daughter filed a request for fair hearing on Petitioner's behalf that was received by the Division of Hearings and Appeals on April 19, 2013.

### **DISCUSSION**

Petitioner's daughter filed a request for fair hearing, asking that Petitioner's Institution Long Term Care benefits be back dated to December 2012. It is the agency's position that Petitioner's benefits cannot be backdated, because her assets were over the program limits during the time in question.

Where an application for benefits has been denied, the applicant bears the burden of proof to show she meets eligibility criteria for those benefits. Estate of Gonwa ex. rel. Gonwa v. DHFS, 265 Wis. 2d 813, 668 N.W.2d 122 (Wis. App. 2003)

To be eligible for Institution Long Term Care a.k.a. Nursing Home Long Term Care, a person must have assets below \$2000. *Medicaid Eligibility Handbook (MEH) §§27.5.1 and 39.4.1*. Where back dating is an issue, the applicant's assets must be below the aforementioned asset limit during the months for which backdating is requested. *See MEH §16.2.1*

In January 2013, Petitioner's daughter listed three types of assets in the application for healthcare benefits:

1. Two bank accounts with a total value of \$1813.60 (\$817.53 + 996.07)
2. An irrevocable burial trust, which is not a countable asset under *MEH §16.5.1*
3. Her home later valued at \$149,000.

Thus, during the time in question, Petitioner's assets were over the \$2000 limit. Consequently, her assets cannot be backdated to December 2012, as requested by her daughter.

Petitioner's daughter argues that the home should not have been counted as an asset for December 2012 and January 2013. However, home property belonging to an institutionalized person can only be exempted under two conditions: 1) A spouse or dependent relative resides in the home or 2) the institutionalized person expresses an intent to return to the home. *MEH §16.8.1.3, see also 20 CFR §416.1212(c)*

Petitioner is a widow and there is no indication in the record that there are any other dependents living in the home. Petitioner's daughter testified that neither she nor Petitioner have any use for the home, so Petitioner must not have any intentions to return to the home. Consequently, neither condition was met and so, the home needed to be counted as an asset.

Petitioner's daughter further argued that the home should not have been counted as an asset because she and her mother intended to sell the home in December and January. First, Petitioner's testimony in this regard is not credible, given that the Amendment to the Listing Contract prohibited the realtor from marketing or advertising the property between February 20, 2013 and June 1, 2013. Clearly, Petitioner's daughter did not want to sell the house until after June 1, 2013. Second, under *MEH §16.2.2*, non-exempt real property is considered unavailable when, "the person who owns the property lists it for sale with a realtor." It is undisputed that there was no signed contract with a realtor during the time in question. As such, the home could not be exempted.

Petitioner's daughter also expressed anger that she was not advised about the rules governing home property prior to February 2013. However, it is unreasonable to expect the agency to provide advice regarding how to circumvent Medicaid rules.

It should be noted that the listing contract into which Petitioner's daughter entered looks very much like a sham and artifice, designed to circumvent, rather than abide by Medicaid rules. On February 19, 2013, Petitioner's daughter was told that to exclude the home as an asset, the listing must be current, not effective June 1, 2013, which was the date in the listing contract. So, the following day, Petitioner's daughter signed an Amendment to the Listing Contract making the contract effective February 20, 2013, but prohibiting the realtor from marketing or advertising the property between February 20, 2013 and June 1, 2013, effectively delaying any actual sale of the home until June 1, 2013.

It is also questionable whether the home was truly listed for sale in February 2013. Indeed, it is difficult to consider a home "listed for sale" if there is no advertising or marketing to encourage the sale of the home. However, it is up to the agency to take a closer look at that transaction and determine whether they certified Petitioner for benefits in error.

Petitioner's daughter should further note that upon the sale of the home, the proceeds from the sale of the home will be considered a countable asset under *MEH §16.8.1.5*.

**CONCLUSIONS OF LAW**

The agency correctly denied Petitioner's request to back date Institution Long Term Care benefits to December 2012.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

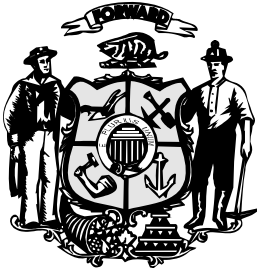
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 13th day of June, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 13, 2013.

Kenosha County Human Service Department  
Division of Health Care Access and Accountability